

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NEXT IT CORPORATION, a
Washington Corporation,

Plaintiff,

v.

SHANTANU ROY and JENNIFER
ROY, husband and wife; JOSH
KNOWLES, a single person, and
NDALL SOLUTIONS, LLC, an
Idaho corporation,

Defendants.

NO. CV-05-380-LRS

**STIPULATED PROTECTIVE ORDER
BETWEEN NEXT IT CORPORATION,
DEFENDANTS ROY, NDALL, AND
DELEX SYSTEMS, INC.**

Having reviewed Plaintiff and Defendants Roy, Ndall, and Delex Systems Joint Motion for Stipulated Protective Order re: Confidentiality (Ct. Rec. 36)¹, and finding good cause, the Court **HEREBY GRANTS** said motion and orders the following.

IT IS HEREBY ORDERED:

Plaintiff Next IT Corporation and Defendants Shantanu Roy and Jennifer Roy, Defendant Ndall Solutions, LLC, and Delex Systems, Inc. shall be bound by the following terms:

¹ The Clerk of the Court shall **STRIKE** Ct. Rec. 32, filed in error, from the Court's pending motion report.

1 All documents and information (including information stored on a
2 computer, diskette or other storage media) produced in the course of
3 discovery, all answers to interrogatories, all answers to requests for
4 admissions, all deposition testimony, and all other evidence and
5 testimony shall be subject to and governed by the terms of the following
6 Protective Order.

7 **I. ATTORNEY'S EYES ONLY INFORMATION**

8 1. The ATTORNEY'S EYES ONLY documents and information (including
9 responses to interrogatories, requests for production of documents and
10 things, and requests for admission) may be designated as such by marking
11 documents, or, in the case of electronically stored information, by
12 marking the diskette or other storage media ATTORNEY'S EYES ONLY.
13 ATTORNEY'S EYES ONLY documents and information shall mean (a) highly
14 sensitive information of any party that could cause serious competitive
15 harm or other serious harm if such information is disclosed to any other
16 person except counsel and those other persons authorized by the
17 disclosing party as set forth below, and (b) personal information
18 belonging or relating to any individual.

19 2. At a deposition, any party may designate testimony as
20 ATTORNEY'S EYES ONLY and portions of deposition transcripts so designated
21 shall be transcribed separately and clearly marked ATTORNEY'S EYES ONLY.
22 All persons present at the deposition except the witness, counsel, the
23 court reporter, and any person authorized under the terms of Paragraph
24 3, below, shall leave the room while the designated testimony is being
25 given. The parties shall have ten (10) calendar days following the date
26 that the official hard copy of the deposition transcript is received from

1 the court reporter to designate any additional portions thereof
2 ATTORNEY'S EYES ONLY by advising the other party in writing. All parties
3 shall thereupon mark those portions of the deposition ATTORNEY'S EYES
4 ONLY.

5 3. Information designated as ATTORNEY'S EYES ONLY may only be
6 disclosed to the Court, the receiving party's counsel, the receiving
7 party's "Independent Expert Witness or Consultant," and Welsh & Katz
8 Ltd., special counsel for Delex Systems, Inc., subject to the terms set
9 forth herein, as set forth below:

10 (a) "Counsel" shall mean disclosure may be made to employees of
11 counsel of record, excluding in house counsel, for the parties who have
12 direct functional responsibility for the preparation and trial of the
13 lawsuit and Robert F. Greer, R. Mark Halligan and employees of Welsh &
14 Katz, Ltd. as special counsel for Delex Systems, Inc. Any such employee
15 to whom counsel makes a disclosure shall be advised of, and become
16 subject to, the provisions of this Protective Order and execute the
17 Undertaking of Confidentiality attached hereto as EXHIBIT A. Counsel
18 shall maintain a list of persons who have signed such Undertaking of
19 Confidentiality and provide it to opposing counsel upon written request.

20 (b) "Independent Expert Witness or Consultant" shall mean a person
21 not presently an employee of any party to this proceeding who is retained
22 or sought to be retained by or on behalf of a receiving party to this
23 proceeding to advise and assist in the preparation and presentation of
24 the receiving party's case and who has been approved by the disclosing
25 party to receive its ATTORNEY'S EYES ONLY documents and information
26 pursuant to Paragraphs 4 and 5 below and who will become subject to the

1 provisions of this Protective Order and execute the Undertaking of
2 Confidentiality attached hereto as EXHIBIT A.

3 (c) Designation of any response to written discovery
4 (interrogatories, requests for documents or things, and requests for
5 admission) shall be made by marking the response ATTORNEY'S EYES ONLY and
6 shall be set forth in a document separate from the document setting forth
7 responses that are not marked ATTORNEY'S EYES ONLY, and shall be treated
8 the same as any other document marked ATTORNEY'S EYES ONLY. To the
9 extent that any answers to interrogatories, transcripts, depositions,
10 responses to requests for admissions, or any other papers filed or to be
11 filed with the court reveal or tend to reveal information claimed to be
12 ATTORNEY'S EYES ONLY, these papers or any portions thereof shall be filed
13 under seal by the filing party with the clerk of the court in an envelope
14 marked SEALED. A reference to this Protective Order should also be made
15 on the envelope.

16 4. ATTORNEY'S EYES ONLY documents and information shall not be
17 shown to an Independent Expert Witness or Consultant until

18 (a) the Undertaking attached as EXHIBIT A is dated and executed;

19 (b) the executed Undertaking has been first approved by the
20 disclosing party.

21 5. To obtain approval under Paragraph 4 (b) supra, the receiving
22 party must send a facsimile copy of the Independent Expert Witness's or
23 Consultant's executed undertaking and Curriculum Vitae to the disclosing
24 party with a specific written request for approval. The disclosing party
25 shall then have ten (10) calendar days to object in good faith to
26 disclosure of ATTORNEY'S EYES ONLY information. If an objection is not

1 made within that time period, the disclosing party is deemed to have
2 approved all disclosures of ATTORNEY'S EYES ONLY information to that
3 Independent Expert Witness. If an objection is made, the parties shall
4 seek in good faith to resolve the objection before filing a motion with
5 the Court. If the objection cannot be resolved by the parties, the
6 receiving party may file a motion with the Court and shall certify to the
7 Court that the parties attempted to resolve the objection.

8 6. Counsel shall keep all documents and information designated as
9 ATTORNEY'S EYES ONLY under this Protective Order secure within their
10 exclusive possession and shall place such documents in a secure area
11 separate from the area in which other documents in the case are stored.
12 No separate copies of documents or information designated ATTORNEY'S EYES
13 ONLY shall be retained or kept during the pendency of this case by any
14 person other than counsel.

15 7. All copies, duplicates, extracts, summaries, or descriptions,
16 including work product of counsel of documents or information designated
17 as ATTORNEY'S EYES ONLY under this Protective Order, or any portion
18 thereof, shall be immediately marked ATTORNEY'S EYES ONLY, if the
19 document has not already been so marked.

20 8. The ATTORNEY'S EYES ONLY designation by a disclosing party may
21 be challenged by the receiving party by explaining the basis for the
22 challenge in writing. The disclosing party shall respond to the written
23 challenge within ten (10) calendar days of receipt of the challenge by
24 explaining the basis for the designation. If the parties in good faith
25 cannot resolve the challenge, the receiving party may file a motion with
26 the Court, certifying that the parties have attempted to resolve the

1 dispute. The parties shall abide by the disclosing party's designation
2 until the Court resolves the issue.

3 9. At the conclusion of the litigation, including all appeals, all
4 documents and information designated or treated as ATTORNEY'S EYES ONLY
5 under this Protective Order shall, at the option of the disclosing
6 party, either be returned to the disclosing party, or the receiving
7 party's counsel shall certify under oath that it has destroyed all such
8 documents and information, providing a list of same, date of destruction,
9 and identity of the person responsible for destruction to the party. All
10 work product of counsel incorporating, summarizing or describing any
11 document or information designated ATTORNEY'S EYES ONLY shall be
12 destroyed by the receiving party's counsel and the receiving party's
13 counsel shall certify under oath that it has destroyed all such material,
14 providing a list of same, date of destruction, and identity of the person
15 responsible for destruction.

16 10. Nothing in this Protective Order shall be construed to limit
17 in any way the rights of the disclosing party or its counsel with respect
18 to the disclosure or use of information that the disclosing party has
19 designated as ATTORNEY'S EYES ONLY documents and information.

20 **II. ADDITIONAL PROVISIONS**

21 11. The designation of information as ATTORNEY'S EYES ONLY by the
22 disclosing party shall not be deemed an admission by the receiving party
23 that such information has such a status.

24 12. Designations of ATTORNEY'S EYES ONLY shall be made in good
25 faith by the disclosing party and the receiving party may request relief
26 from the Court if there is an abuse of or injustice arising from this

1 order but only after first seeking in good faith to resolve any dispute
2 relating thereto.

3 13. The documents and information designated as ATTORNEY'S EYES
4 ONLY shall not be used or communicated by any person receiving it, or to
5 whom it is disclosed in any manner, for any purpose whatsoever, other
6 than as expressly set forth herein and as necessary for preparation for
7 trial or settlement of this litigation .

8 14. There shall be no reproduction of information designated as
9 ATTORNEY'S EYES ONLY except as required for preparation for trial or
10 settlement of this case. Any summaries, notes or extractions of
11 ATTORNEY'S EYES ONLY information shall be designated as ATTORNEY'S EYES
12 ONLY and shall be shown or provided to those persons only under the
13 conditions set forth in this Order.

14 15. Information designated as ATTORNEY'S EYES ONLY may be referred
15 to by the parties in notices, motions, briefs, or any other pleadings or
16 papers, and may be referred to in depositions, but only to the extent no
17 information contained within the four corners of the so designated
18 document or information or substance thereof is disclosed. Information
19 designated as ATTORNEY'S EYES ONLY may be marked as exhibits in this
20 action, but only to the extent such exhibits are disclosed consistent
21 with Paragraph 3(iii) herein.

22 16. If, at the time of trial or other proceeding in open court, the
23 plaintiff or defendants intend to introduce into evidence any information
24 designated as ATTORNEY'S EYES ONLY, counsel for that party shall give
25 timely notice of that intention to the Court and to opposing counsel so
26 that the Court may take such steps as it shall deem reasonably necessary

1 to preserve the confidentiality of such information during trial or other
2 proceeding in open court

3 17. Nothing in this Order shall prevent any party from seeking a
4 modification of this Order or additional security measures to preserve
5 the confidentiality of such designated information.

6 18. Any person who violates the terms of this Order may be found
7 in contempt of court and subject to penalties as the Court may deem just
8 and proper upon application and proof of the subject violation.

9 **IT IS SO ORDERED.**

10 The District Court Executive is directed to file this Order and
11 provide copies to counsel.

12 **DATED** this 22nd day of December, 2005.

13 ***s/Lonny R. Suko***

14 _____
15 LONNY R. SUKO
16 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NEXT IT CORPORATION, a
Washington Corporation,

Plaintiff,

NO. CV-05-380-LRS

v.

UNDERTAKING TO ABIDE BY
PROTECTIVE ORDER REGARDING
CONFIDENTIALITY

SHANTANU ROY and JENNIFER
ROY, husband and wife; JOSH
KNOWLES, a single person, and
NDALL SOLUTIONS, LLC, an
Idaho corporation,

Defendants.

Under oath, I, _____, declare that:

1. My address is _____.

2. My present employer and the address of my present employer
is set forth below.

3. My present occupation or job description is:

1 4. I have attached hereto my curriculum vitae and/or resume and
2 it contains a full and accurate description of my educational
3 background and my employment history for the past five years.

4 5. I have been requested to assist _____in
5 the preparation and conduct of this action and have received a copy of
6 the Protective Order.

7 6. I have carefully read and understand the provisions of the
8 Protective Order.

9 7. I will comply with all of the provisions of the Protective
10 Order.

11 8. I will hold in confidence, will not disclose to anyone not
12 qualified under the Protective Order, and will not copy or use any
13 ATTORNEY'S EYES ONLY information which is disclosed to me except as
14 may be necessary to assist counsel or to testify as an expert witness
15 in this action.

16 9. I will return all ATTORNEY'S EYES ONLY information which
17 comes into my possession at the conclusion of the litigation and/or I
18 will provide a sworn certificate of destruction of such information.

19 10. I hereby submit to the jurisdiction of this Court for the
20 purpose of enforcement of this Protective Order.

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1 11. I declare under penalty of perjury that the foregoing is
2 true and correct.

3 Dated this _____ day of _____, 200__.

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6 _____
7 Name: _____
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9 SUBSCRIBED AND SWORN to before me on the ____ day of _____, 200__.

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12 _____
13 Notary Public in and for the State of
14 Washington, Residing at _____
15 My Commission Expires: _____
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